

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1974

— ● —

ENROLLED

*Committee Substitute for*  
HOUSE BILL No. 627

(By Mr. *Jones, of Kanawha*)

— ● —

PASSED March 9 1974

In Effect 90 days Passage



RECEIVED  
OFFICE OF THE  
SECRETARY OF STATE  
DATE 3-26-74

627

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C 641

FILED IN THE OFFICE  
BROOK H. BENCKELL III  
SECRETARY OF STATE  
THIS DATE 3-26-74

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**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**H. B. 627**

(By MR. JONES, of Kanawha)

[Passed March 9, 1974; in effect ninety days from passage.]

**AN ACT** to repeal section eleven, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to obscenity; and to amend said chapter sixty-one by adding thereto a new article, designated article eight-a, relating to the preparation of or distribution or exhibition of obscene matter for or to minors; defining terms; prohibiting the preparation of or distribution or exhibition of obscene matter for or to minors; exempting certain employees; providing a presumption as to knowledge; relating to defense as to age of minor; and providing criminal offenses and penalties; and providing rule of construction to preserve rights of free speech and picketing.

*Be it enacted by the Legislature of West Virginia:*

That section eleven, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that said chapter be amended by adding thereto a new article, designated article eight-a, to read as follows:

**ARTICLE 8A. PREPARATION, DISTRIBUTION OR EXHIBITION OF  
OBSCENE MATTER TO MINORS.**

**§61-8A-1. Definitions.**

1     When used in this article, the following words, and any

2 variations thereof required by the context, shall have the  
3 meaning ascribed to them in this section:

4 (1) "Distribute" means to transfer possession of, whether  
5 with or without consideration.

6 (2) "Employee" means any individual who renders per-  
7 sonal services in the course of a business, who receives com-  
8 pensation therefor at a fixed rate and who has no financial  
9 interest in the ownership or operation of the business other  
10 than his salary or wages.

11 (3) "Exhibit" means to display or offer for viewing,  
12 whether with or without consideration.

13 (4) "Knowingly" means to have knowledge or to be  
14 aware of the content or character of obscene matter.

15 (5) "Matter" means any book, magazine, newspaper or  
16 other printed or written material, or any picture, drawing or  
17 photograph, motion picture, or other visual representation, or  
18 any statue or other figure, or live conduct, or any recording,  
19 transcription or mechanical, chemical or electrical reproduc-  
20 tion, or any other articles, equipment, machines or materials.

21 (6) "Minor" means any individual under the age of eigh-  
22 teen years.

23 (7) "Obscene matter" means to the average individual, ap-  
24 plying contemporary state standards, matter which:

25 (a) Considered as a whole, appeals to the prurient in-  
26 terests;

27 (b) Depicts or describes in a patently offensive manner  
28 ultimate sexual acts, both normal and perverted, actual or  
29 simulated, masturbation, sodomy, fellatio, cunnilingus, bes-  
30 tiality, sadism, excretory functions or lewd exhibition of the  
31 genitals; and

32 (c) Considered as a whole lacks serious literary, artistic,  
33 political or scientific value.

34 (8) "Person" means any individual, partnership, firm, as-  
35 sociation, corporation or other legal entity.

36 (9) "Prepare" means to produce, publish or print.

37 (10) "Public display" means the placing of material on  
 38 or in a billboard, viewing screen, theatre, marquee, news stand,  
 39 display rack window show case, display case, or similar public  
 40 place so that the material within the meaning of "obscene  
 41 matter" is easily visible from a public thoroughfare from the  
 42 property of others or from commercial or business premises  
 43 generally open to minors at the time of such placing.

**§61-8A-2. Preparation, distribution or exhibition of obscene matter to minors; penalties.**

1 If any person knowingly sends or causes to be sent or brings  
 2 or causes to be brought into this state for distribution, exhibi-  
 3 tion, or public display, or in this state prepares, distributes,  
 4 exhibits or makes a public display or offers to prepare, dis-  
 5 tribute, exhibit, or make a public display, or has in his  
 6 possession with the intent to distribute, exhibit, or make a  
 7 public display of any obscene matter to a minor, he shall be  
 8 guilty of a misdemeanor, and, upon conviction thereof, shall  
 9 be fined not more than five hundred dollars or imprisoned  
 10 in the county jail not more than six months or both fined and  
 11 imprisoned. A person convicted of a second or subsequent  
 12 offense under this section shall be guilty of a misdemeanor,  
 13 and, upon conviction thereof, shall be fined not more than one  
 14 thousand dollars or imprisoned in the county jail not more than  
 15 one year or both fined and imprisoned.

**§61-8A-3. Employees acting within scope of employment shall not be prosecuted.**

1 No employee shall be guilty of a violation of this article  
 2 when such employee is a projectionist, ticket taker, usher, or  
 3 when such employee distributes, prepares or exhibits obscene  
 4 matter while acting within the scope of his regular employment.

**§61-8A-4. Presumption of knowledge.**

1 Any person who distributes or exhibits obscene matter, or  
 2 possesses obscene matter with the intent to distribute or exhibit  
 3 the same in the course of his business, is presumed to do so  
 4 with knowledge of its content or character.

**§61-8A-5. Reasonable belief that a minor is eighteen years of age.**

1 No person shall be guilty of distributing or exhibiting

2 obscene matter to a minor when such person has reasonable  
3 cause to believe that the minor involved was eighteen years of  
4 age or more and such minor exhibited to such person a driver's  
5 license, draft card or other official or apparently official  
6 document purporting to establish that such minor was eighteen  
7 years of age or more.

**§61-8A-6. Hiring, employing, etc., minor; penalty.**

1 Any person who, with knowledge that a person is a minor  
2 under eighteen years of age, or who, while in possession of  
3 such facts that he should reasonably know that such person  
4 is a minor under eighteen years of age, hires, employs or uses  
5 such minor to do or assist in doing any of the acts prescribed  
6 in paragraph (b), subsection (7), section one of this article,  
7 shall be guilty of a misdemeanor.

**§61-8A-7. Free speech preserved.**

1 Nothing herein shall be construed to limit the free exercise of  
2 free speech or picketing by any organization, group or in-  
3 dividual for the purpose of upholding community standards.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Laurel Lantry  
Chairman Senate Committee

Clarence B. Christensen Jr.  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Haward Watson  
Clerk of the Senate

C. Blankenship  
Clerk of the House of Delegates

H. T. Brotherton Jr.  
President of the Senate

Lewis F. McManus  
Speaker House of Delegates

The within approved this the 25th  
day of March, 1974.

Arch A. Moore Jr.  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/21/74  
Time 10:30 a.m.